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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE, Plaintiff and Respondent, v. ANDREA FRONCILLO, Defendant and Appellant.	A151901 (San Francisco County Super. Ct. Nos. SCN225077, 15009456.)

Andrea Froncillo challenges his misdemeanor battery convictions. He contends the trial court erred by restricting his right to cross-examine the prosecution's expert witness and by precluding him from impeaching the victim. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The prosecution charged Froncillo with crimes arising out of an April 2015 incident involving his then girlfriend, L.L.

Overview of Trial Evidence

In 2015, L.L. and Froncillo were dating. On April 23 at 5:16 a.m., L.L. called 911.[1] Shortly thereafter, San Francisco police officers, including Officer Tiffany Gunter, responded to a "[c]all for domestic violence" at Froncillo's apartment. Froncillo answered the door. Officers entered the apartment and saw L.L. in the living room. She

[1] L.L. did not testify at trial. A recording of her 911 call was played for the jury and admitted into evidence for the purpose that the call was made, not for the truth of the statements made during the call. The court admitted photographs of L.L.'s injuries into evidence.

was sitting in a chair, "with her body bent over, and her head in her hands." When L.L. lifted her head, Gunter could see her face was injured: it was swollen and red, and there was "dried blood around her mouth." L.L.'s neck was red and her throat had a mark, "almost like a laceration."

Gunter asked L.L. what caused the injuries; L.L. said "she fell." Then Gunter asked L.L. whether she had been strangled and L.L. "started crying." L.L. nodded when Gunter asked whether she had lost consciousness. An officer called an ambulance. Gunter rode with L.L. in the ambulance. During the ride, L.L. told medics she fell. The medics said L.L.'s "injuries were not consistent [with] a fall" and L.L. admitted she and Froncillo had been in argument and that Froncillo had "slapped her in the face." L.L. explained that she retaliated by kicking Froncillo's car, which upset Froncillo. He punched her in the face "numerous times." L.L. fell to the ground and Froncillo kicked her, stomped her in the head, and punched her in the face until she lost consciousness. When L.L. regained consciousness, she was in the front seat of her car.[2]

Gunter went to the police station and spoke to Froncillo, who had been arrested. Gunter told Froncillo he was being charged with domestic violence and aggravated assault. Froncillo smugly responded that there was no evidence, "and that this was the third time [the] police department had arrested him with no evidence, and when he got released, he was going to sue." When Gunter told Froncillo he had caused L.L.'s injuries, Froncillo "laughed" and said L.L. "would never say that" because he "pays for everything for her" and she's "an employee of his."

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[2] At 3:00 a.m., Froncillo's upstairs neighbor heard "yelling" coming from Froncillo's apartment, "and it sounded like a fight." The neighbor heard "things banging around." Eventually, the noise moved to the garage. The neighbor went to the garage and saw Froncillo. He was yelling in a loud and angry voice, " '[g]et the fuck out of here' " and " '[l]ook what you did to my car.' " The neighbor assumed Froncillo was talking to L.L. He heard Froncillo say " '[w]ake up' " and " '[g]et out' " and a dozen "hard" slaps, like Froncillo was trying to "wake [L.L.] up and get her out." Another neighbor heard Froncillo yelling in a "pretty loud, pretty rough" voice. That neighbor also heard what sounded like a fist banging into a wall.

Inspector John Keane testified as an expert on investigating domestic violence cases. Domestic violence victims display different amounts "of cooperation throughout the different stages of a criminal case." The majority of victims call 911. But as the case progresses, victims "decide not to come to court, they recant . . . and they also minimize . . . the conduct of the alleged batterer." Keane listened to L.L.'s 911 call. L.L. seemed unwilling "to tell the call taker what was going on," which was "unusual." Keane explained that some domestic violence victims refuse to call 911 even if they need help because they are "fearful of further violence" if they cooperate with law enforcement, or because they "fear losing their financial support, their immigration status, . . . loss of children." On cross-examination, defense counsel pursued a line of questioning suggesting a victim might not testify or cooperate with law enforcement to avoid getting "in trouble" for causing the altercation, or to avoid self-incrimination.

Froncillo testified he and L.L. were dating in 2015. L.L. worked at Froncillo's restaurant. On the evening of April 22, L.L. was at the restaurant. She saw Froncillo meeting with a woman at the bar. After the woman left, L.L. approached Froncillo. L.L. was angry because her scheduled visitation with her daughter had not happened, and because she thought Froncillo was flirting with another woman, "instead of helping her" with her child. Froncillo suggested they "discuss it" at his apartment.

Froncillo and L.L. went to his apartment at 1:00 a.m. on April 23. L.L. drank wine and yelled at Froncillo. Froncillo also had a glass of wine. L.L. threw a glass into the sink, breaking it. Froncillo told L.L. she had to leave and they went to the garage. In the garage, L.L. continued yelling. Froncillo told L.L. " '[t]hey probably should have kept your daughter,' " which made L.L. go "crazy." She kicked Froncillo's car and screamed at him. As L.L. kicked the car, she fell to the ground and lost consciousness. Froncillo was mad. He said: " 'Who does this?' . . . . 'Get the fuck out of here. You gotta go. Go. Get out of here.' " Froncillo tried to perform CPR; he also slapped L.L.'s face to try to wake her. As she regained consciousness, Froncillo moved L.L. to the passenger seat of her car. He wanted to take L.L. to the hospital but she refused.

Froncillo eventually helped L.L. back to his apartment. Then he fell asleep until the police knocked on the door.

Verdict and Sentence

The jury convicted Froncillo of misdemeanor battery in a dating relationship (Pen. Code, § 243, subd. (e)(1)), misdemeanor battery (Pen. Code, § 242), and two counts of misdemeanor assault (Pen. Code, § 240). The court dismissed the assault convictions due to instructional error. On the battery convictions, the court suspended imposition of sentence, ordered Froncillo to serve one day in county jail, and placed him on probation.

DISCUSSION

I.

The Court Did Not Err by Limiting Cross-examination

Froncillo claims the court erred by "unduly restricting" his cross-examination of Inspector Keane.

A. Background

Froncillo moved in limine to exclude Keane's testimony. As relevant here, he argued Keane's testimony "concerning 'typical' domestic violence cases" was irrelevant and unreliable. Froncillo also claimed Keane's testimony was unhelpful because Keane did not know "anything about the specifics of the case or the individuals involved," and his proffered testimony was "little more than banal generalities[.]" At an in limine hearing, L.L. invoked her Fifth Amendment privilege and refused to answer questions. The court sustained the privilege, excused L.L., and deemed her unavailable for trial (Evid. Code, § 240).[3] Keane testified and the court deemed him an expert in investigating domestic violence cases.

The prosecutor moved to exclude L.L.'s assertion of her Fifth Amendment rights, noting, "I don't think that's admissible evidence." Defense counsel refused to "concede the point" and said he would "reserve that issue." The court took the matter under submission. After Keane testified at trial, defense counsel asserted, pursuant to the

[3] Undesignated statutory references are to the Evidence Code.

federal confrontation clause, "that the Court should allow [him] to cross-examine" Keane on L.L.'s "assertion of her Fifth Amendment rights and a then pending Child Protective Services [(CPS)] investigation." The court denied the request.

B. No Error in Restricting Cross-examination

"A criminal defendant possesses a fundamental right to confront the witnesses against him. [Citations.] Cross-examination is a cornerstone of that fundamental right." (*People v. Mora and Rangel* (2018) 5 Cal.5th 442, 476.) " '[T]o deprive an accused of the right to cross-examine the witnesses against him is a denial of . . . due process of law.' " (*People v. Brown* (2003) 31 Cal.4th 518, 538.) The right to cross-examine guaranteed by the confrontation clause is "meaningful but limited." (*People v. Mora and Rangel*, at p. 477.) It assures "the opportunity to engage in effective cross-examination," but "not necessarily cross-examination that satisfies the defendant in any conceivable respect." (*Ibid.*) " 'The right to confront and to cross-examine . . . may, in appropriate cases, bow to accommodate other legitimate interests in the criminal trial process.' " (*People v. Brown*, *supra*, at p. 538.) "The trial court retains wide latitude to restrict repetitive, prejudicial, confusing, or marginally relevant cross-examination. Unless the defendant can show that the prohibited cross-examination would have created a significantly different impression of the witness's credibility, the trial court's exercise of discretion to restrict cross-examination does not violate the constitutional right of confrontation." (*People v. Sánchez* (2016) 63 Cal.4th 411, 450–451.)

The court did not err by declining to permit Froncillo to cross-examine Keane on L.L.'s assertion of her Fifth Amendment rights and her pending CPS case. Froncillo has not demonstrated the evidence was relevant, i.e., that it had a tendency "to prove or disprove any disputed fact . . . of consequence to the determination of the action." (§§ 210, 350.) Assuming the evidence was relevant, the court was within its discretion to limit cross-examination pursuant to section 352. The jury had before it evidence suggesting L.L. provoked the altercation with Froncillo because she was angry about not seeing her daughter. The jury also heard testimony on why domestic violence victims decline to testify at trial, including because they fear losing their children. On cross-

examination, defense counsel asked Keane questions suggesting a victim might not testify to avoid incriminating herself, or to avoid getting "in trouble." The additional proffered evidence had little, if any probative value, and the minimal probative value was outweighed by the likelihood the evidence would confuse the jury. (*People v. Wright* (1985) 39 Cal.3d 576, 586–587.)

To the extent Froncillo contends the restriction on cross-examination violated the confrontation clause, we disagree. Here, the evidence was—at best—marginally relevant, and it was significantly likely to confuse the jury. Most importantly, Froncillo has not demonstrated the "prohibited cross-examination would have created a significantly different impression of [Keane's] credibility." (*People v. Sánchez, supra,* 63 Cal.4th at p. 451.) Keane had no personal knowledge of L.L.'s reasons for not testifying because the only item of evidence he reviewed was the 911 call. Keane offered general information on why domestic violence victims decline to cooperate with law enforcement; hypothetical reasons why L.L. declined to cooperate would not have undermined Keane's credibility as an expert witness.[4] (*Id.* at pp. 450–451.) For these reasons, we also reject Froncillo's contention that the court abused its discretion under section 721, subdivision (a), which provides that an expert witness "may be fully cross-examined as to . . . the matter upon which his . . . opinion is based and the reasons for his . . . opinion."

II.

The Court Did Not Err by Precluding Froncillo from "Impeaching" the Victim

Froncillo claims the court erred by preventing him from "impeaching" L.L. with her "bias and motive to fabricate."

[4] Froncillo's opening brief discusses *People v. Sanchez* (2016) 63 Cal.4th 665. Assuming for the sake of argument this claim is preserved, we conclude Keane's testimony did not violate *Sanchez* because Keane did not relate case-specific hearsay to the jury. (*People v. Espinoza* (2018) 23 Cal.App.5th 317, 320.)

A. Background

Before Froncillo testified, the prosecutor moved to exclude testimony that the argument "involved a dispute over [L.L.'s] child" and that CPS "had been called regarding the child." Defense counsel objected, arguing "the issue of the child" was "a core issue as to the argument" because Froncillo's comment about CPS "trigger[ed]" the altercation. In response, the prosecutor characterized the evidence as irrelevant "character evidence." The court determined the evidence was inadmissible under sections 1103 and 352, but permitted Froncillo to testify he made a "provocative" statement to L.L. Froncillo testified his comment to L.L.—that "[t]hey probably should have kept your daughter"—made L.L. go "crazy" and prompted her to kick his car.

B. No Violation of Right to Confrontation or to Present a Defense

Froncillo claims the court violated his right to confrontation and to present a defense by preventing him from "impeach[ing]" L.L. with "her bias and motive to fabricate." Froncillo claims he should have been permitted to testify that L.L. did not want medical treatment or the police involved because it might affect her CPS case, and that L.L.'s "rage was provoked by his" reference to the "CPS action." According to Froncillo, this evidence would have explained why L.L. "turned violent during their argument, why he did not help her get medical care and drive her to the hospital, and why her statements to the paramedics about what happened that night were not credible."

This argument is not persuasive because—as discussed above—the marginal probative value of the proffered evidence was outweighed by the prejudicial effect. (§ 352.) Froncillo did not have a constitutional right " 'to present all relevant evidence in his favor, no matter how limited in probative value such evidence.' " (*People v. Shoemaker* (1982) 135 Cal.App.3d 442, 450.) "A defendant has the general right to offer a defense through the testimony of his or her witnesses [citation], but a state court's application of ordinary rules of evidence—including the rule stated in . . . section 352—generally does not infringe upon this right [citations]. The excluded evidence in the present case was not so vital to the defense that due process principles required its admission." (*People v. Cornwell* (2005) 37 Cal.4th 50, 82, disapproved on other grounds

in *People v. Doolin* (2009) 45 Cal.4th 390, 421, fn. 22.) Froncillo testified that his comment about L.L.'s daughter made her "crazy," and prompted her to kick his car and scream at him. He also explained why he did not take L.L. to the hospital. The exclusion of the details of the CPS case did not deny Froncillo the right to prevent a defense.

DISPOSITION

The judgment is affirmed.

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Jones, P.J.

We concur:

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Simons, J.

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Needham, J.

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